

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs July 21, 2003 Session

ARNOLD M. JOHNSON v. TERESA ANN JOHNSON

Appeal from the Probate and Family Court for Cumberland County
No. 12951 Steven C. Douglas, Judge

FILED JULY 29, 2003

No. E2003-00179-COA-R3-CV

Teresa Ann Johnson (“Wife”) and Arnold M. Johnson (“Husband”) were divorced by entry of a final divorce decree entered on October 11, 2000. Various aspects of this final decree later were set aside by the Trial Court pursuant to Wife’s request. A hearing then was conducted with the Trial Court hearing proof from the parties on the classification of their real and personal property as separate or marital property. After the Trial Court ordered the marital property sold at an auction, another hearing was held and the parties testified further. The Trial Court entered its judgment on July 3, 2002. Wife then filed a motion to alter or amend the July 3, 2002 judgment. After a hearing, the Trial Court denied Wife’s motion to alter or amend. Wife appeals, challenging the Trial Court’s division of proceeds from the sale of marital property and a claimed omission by the Trial Court to address the appropriate amount of child support to be paid by Husband. The record on appeal contains no transcripts or statements of the evidence from any of the hearings. We affirm the judgment, deem Wife’s appeal to be frivolous, and remand this case to the Trial Court to determine expenses due Husband pursuant to Tenn. Code Ann. § 27-1-122.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Family
and Probate Court Affirmed; Case Remanded.**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HOUSTON M. GODDARD, P.J., and HERSCHEL P. FRANKS, J., joined

Edward L. Boring, Pikeville, Tennessee, for the Appellant Teresa Ann Johnson.

C. Douglas Fields, Crossville, Tennessee, for the Appellee Arnold M. Johnson.

MEMORANDUM OPINION¹

Husband and Wife were divorced on October 11, 2000. The record in this case does not contain a copy of the divorce decree, but instead begins with a Petition for Contempt filed by Husband one month later. In this petition, Husband claimed Wife acted contrary to the terms of the final divorce decree by removing all the appliances, fixtures, and certain other property from the marital residence. Husband sought to have Wife held in contempt and a monetary judgment for damages.

In December of 2000, Wife filed a motion to alter or amend the final divorce decree, claiming Husband threatened her with physical violence if she did not consent to the divorce and Marital Dissolution Agreement (“MDA”). Wife claimed Husband fraudulently coerced her into signing the MDA, which she maintained inequitably divided the marital assets. Wife also answered Husband’s petition for contempt, generally denying the allegations contained therein. Although no order is contained in the record, the Trial Court apparently granted Wife’s motion and set aside the MDA, at least insofar as the property division was concerned.

In April of 2002, Husband filed a Motion to Reduce Child Support. According to Husband, the MDA required him to pay child support, but after the MDA was entered he underwent heart surgery. Husband claimed he was no longer able to maintain the level of income upon which the previous child support order was based because he could no longer do construction and farm work.

A hearing was held in April of 2002, at which time the Trial Court classified the parties’ property as either separate or marital. The Trial Court then ordered the marital property to be sold at an auction. After the marital property was sold, a hearing was held on June 4, 2002, to resolve issues surrounding division of the proceeds from the sale as well as allocation of marital debts. The Trial Court heard testimony from the parties at this hearing. On July 3, 2002, the Trial Court entered an Order setting forth its conclusions regarding distribution of the proceeds from the sale, after giving both Husband and Wife adjustments for property retained by the other or previously sold, etc. In this Order, the Trial Court also noted that Husband had withdrawn his motion to reduce child support, the only pleading or motion then before the Trial Court concerning the amount of child support.

¹Rule 10 of the Rules of the Court of Appeals provides as follows:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION”, shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

Wife filed a motion to alter or amend the Trial Court's judgment entered on July 3, 2002, challenging various aspects of the Trial Court's division of proceeds from the sale of the marital property. Wife further claimed the Trial Court never addressed the child support issue. After yet another hearing, the Trial Court denied Wife's motion to alter or amend by order entered on December 18, 2002.

Wife appeals raising two issues. The first issue challenges various aspects of the Trial Court's division of marital assets. Wife's second issue is a claim that the Trial Court "erred by [omitting] a ruling concerning the correct amount of child support that is due and payable by [Husband] in the Order from the June 4, 2002 hearing."

Wife appeals the December 18, 2002, denial of her motion to alter or amend the Trial Court's judgment entered on July 3, 2002. This judgment was based on testimony and other proof presented at the hearing on June 4, 2002. Insofar as the amount of Husband's monthly child support payment is concerned, the record does show that Husband's monthly child support obligation had been set by the Trial Court in the initial divorce proceedings. On appeal, the only pleading or motion in the record on the issue of the amount of Husband's child support is Husband's motion seeking to have his monthly child support payments reduced, and this motion was withdrawn. The record contains no pleading or motion filed by Wife seeking a modification in the amount of child support payments, although Wife claims "the same was made an issue in the proof presented" at the June 4 hearing. Unfortunately, we have no transcript or statement of the evidence from the June 4 hearing. In fact, we have no transcript or statement of the evidence from *any* of the hearings in this case. In the absence of a transcript or statement of the evidence pertaining to the relevant hearings below, we are required to presume that the Trial Court's factual determinations underpinning its legal conclusions are correct. *Sherrod v. Wix*, 849 S.W.2d 780, 783 (Tenn. Ct. App. 1992). Therefore, there is absolutely nothing before us that would justify a reversal or modification of the judgment below. *See* Tenn. R. App. P. 36(b).

The sole issue raised by Husband on appeal is his claim that Wife's appeal is frivolous, relying on Tenn. Code Ann. § 27-1-122 (2000). We agree. An appeal is deemed frivolous if it is devoid of merit or if it has no reasonable chance of success. *Bursack v. Wilson*, 982 S.W.2d 341, 345 (Tenn. Ct. App. 1998); *Industrial Dev. Bd. v. Hancock*, 901 S.W.2d 382, 385 (Tenn. Ct. App. 1995). Without any transcripts or statements of the evidence, this appeal had no chance of success.

The judgment of the Trial Court is affirmed. Costs on appeal are taxed to the appellant, Teresa Ann Johnson, and her surety. This matter is remanded to the Trial Court for a determination of the expenses due Husband pursuant to Tenn. Code Ann. § 27-1-122.

D. MICHAEL SWINEY, JUDGE